IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE R.BASANT

WEDNESDAY, THE 21ST NOVEMBER 2007 / 30TH KARTHIKA 1929

Bail Appl..No. 7042 of 2007()

CRIME NO. 234/07 OF PARIPALLY POLICE STATION
CRMP.3512/2007 of D.C. & SESSIONS COURT,KOLLAM

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PETITIONERS : ACCUSED NO.1 & 2:

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1. RAJU, AGED 33 YEARS, S/O.LATE RAJAPPAN
CHETTYAR CHARUVILA PUTHENVEEDU, PLAVINMOODU,
PARIPPALLY, KOLLAM.

2. SOBHA, AGED 29 YEARS. W/O. RAJU,
CHARUVILA PUTHENVEEDU, PLAVINMOODU,
PARIPALLY, KOLLAM.

BY ADV. SRI. K.SHAJ
SRI.SAJJU.S
SRI.B.BALRAJ

RESPONDENTS: COMPLAINANT:

STATE OF KERALA, REPRESENTED BY THE
PUBLIC PROSECUTOR, HIGH COURT OF KERALA,
ERNAKULAM.

BY PUBLIC PROSECUTOR SRI. S.U. NAZAR

THIS BAIL APPLICATION HAVING COME UP FOR ADMISSION ON 21/11/2007, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

R. BASANT, J.

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B.A.No. 7042 of 2007

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Dated this the 21st day of November, 2007

O R D E R

Application for anticipatory bail. The petitioners are husband and wife. The crux of the allegations is that they induced the defacto complainant to part with an amount of Rs.1,30,000/- on the unintended promise that VISA for employment abroad shall be made available to the defacto complainant. Crime has been registered. Investigation is in progress.

2. The learned counsel for the petitioners submits that the allegations are totally incorrect and do not at all indicate the culpable responsibility of either of the petitioners for the offence under Section 420 I.P.C. He submits that, at any rate, the second petitioner, who is the wife of the first petitioner, does not deserve to endure the trauma of arrest and detention.

3. Notice was given. The learned Prosecutor does not oppose the application in so far as the second petitioner is

concerned. He further submits that the first petitioner, who had actually made the false representation, has to be arrested and interrogated. Absolutely no circumstances exist to invoke the discretion under Section 438 Cr.P.C., submits the Prosecutor.

4. Having considered all the relevant inputs, I find merit in the opposition by the Prosecutor. I agree that this is a fit case where the first petitioner does not deserve to arm himself with an order of anticipatory bail. He must resort to the ordinary and regular procedure of appearing before the Investigating Officer or the learned Magistrate and then seek regular bail in the ordinary course. Anticipatory bail can be granted to the second petitioner, subject to appropriate conditions.

5. In the result:

(1) This application in so far as it relates to the first petitioner is dismissed with the observation that if the petitioner appears before the learned Magistrate and applies for bail after giving sufficient prior notice to the Prosecutor in charge of the case, the learned Magistrate must proceed to pass orders on merits, in accordance with law and expeditiously.

(2) The following directions are issued under Section 438 Cr.P.C. in favour of the second petitioner.

(a) The second petitioner shall surrender before the learned Magistrate on 28.11.2007 at 11 a.m. The learned Magistrate shall release the second petitioner on regular bail on condition that she executes a bond for Rs.25,000/- (Rupees twenty five thousand only) with two solvent sureties each for the like sum to the satisfaction of the learned Magistrate.

(b) She shall make herself available for interrogation before the Investigating Officer between 10 a.m. and 1 p.m. on 29.11.2007 and 30.11.2007 and thereafter on all Mondays and Fridays between 10 a.m. and 12 noon for a period of one month and subsequently as and when directed by the Investigating Officer in writing to do so.

(c) If the second petitioner does not appear before the learned Magistrate as directed in clause (1) above, these directions shall lapse on 28.11.07 and the police shall be at liberty thereafter to arrest the petitioner and deal with her in accordance with law.

(d) If the second petitioner were arrested prior to her surrender on 28.11.2007 as directed in clause (1) above, she shall be released on bail on her executing a bond for Rs.25,000/- without any surety undertaking to appear before the learned Magistrate on 28.11.2007.

(R. BASANT)
Judge

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